

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MY NGO,

Plaintiff,

v.

TAMMY CAMPBELL, et al.,

Defendants.

Case No.: 1:23-cv-01423-NODJ-SKO

**ORDER VACATING FINDINGS AND  
RECOMMENDATIONS TO DISMISS THIS  
ACTION FOR PLAINTIFF'S FAILURE TO  
OBEY COURT ORDERS AND FAILURE TO  
PROSECUTE**

(Doc. 11)

Plaintiff My Ngo is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

**I. BACKGROUND**

Plaintiff filed his original complaint on September 29, 2023. (Doc. 1.) On January 2, 2024, this Court issued its First Screening Order. (Doc. 9.) The Court found the complaint fails to state a claim upon which relief can be granted. (*Id.* at 4-9.) Plaintiff was granted leave to file a first amended complaint, curing the deficiencies identified in the order, or, alternatively, a notice of voluntary dismissal, within 21 days. (*Id.* at 8-9.)

On February 1, 2024, when Plaintiff failed to file a first amended complaint or a notice of voluntary dismissal within 21 days, the Court issued its Findings And Recommendations To Dismiss This Action For Plaintiff's Failure To Obey Court Orders And Failure to Prosecute. (Doc. 11.) Objections were to be filed within 14 days of the date of service of the order. (*Id.* at 4.)

On February 5, 2024, Plaintiff filed a first amended complaint and a notice to the Court. (Docs. 12 & 13.)

## II. DISCUSSION

In a notice dated and signed February 1, 2024, Plaintiff states he “filed” his amended complaint on January 18, 2024, by submitting it “via Institution mail through Law Library to Prison Litigation Coordinator, to be filed E-Filing or Legal mailing Process.” (Doc. 13 at 1.) He states he did not receive any documents in return, nor “any notice/verification that [his] Amended Civil rights complaint was filed.” (*Id.*) Plaintiff attaches a copy of his amended complaint and asks the Clerk of the Court to “please look into this matter.” (*Id.*) Plaintiff’s first amended complaint was filed that same day. (Doc. 12.)

Plaintiff’s notice concerning the status of his first amended complaint states he submitted his amended complaint to prison officials on January 18, 2024--within the 21-day period provided for in the Court’s screening order. The first amended complaint filed with this Court on February 5, 2024, is dated and signed January 18, 2024. It appears Plaintiff complied with the Court’s screening order and for reasons beyond his control, his first amended complaint was delayed. The Court will vacate the Findings and Recommendations issued February 1, 2024, and will screen Plaintiff’s first amended complaint in due course.

## III. CONCLUSION AND ORDER

For the reasons given above, **IT IS HEREBY ORDERED** that:

1. The Findings and Recommendations issued February 1, 2024 (Doc. 11) are **VACATED**; and
2. Plaintiff’s first amended complaint will be screened in due course.

IT IS SO ORDERED.

Dated: **February 8, 2024**

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE